

Minutes of the
Second Meeting of the Underground Pipeline Task Force
Matthew Training Center
523 East Capitol
Pierre, South Dakota

September 22, 2008
9:00 a.m. CDT

CALL MEETING TO ORDER: Chairman Gary Hanson called the meeting to order. A quorum was present.

BOARD MEMBERS PRESENT: Gary Hanson, Troy Styer, Daniel Holli, Dennis Davis, Gordon Woods, Mark Anderson, and Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

INFORMATIONAL PRESENTATIONS

Source Water Protection and Wellhead Protection Program

Tom Brandner, Natural Resources Engineering Director with the DENR, provided the task force with an overview of the Source Water and Wellhead Protection Program. Included in the presentation was a description of the legal authority for the Wellhead Protection Program and a description of how local governments can administer the program.

Legality of a State Imposing a Fee or Bond on an Interstate Pipeline

Joe Nadenicek, Staff Attorney with the DENR, discussed the Dormant Commerce Clause and Federal Preemption as they relate to the imposition of a per barrel cleanup fee on interstate pipeline systems.

Examples of Other States Cleanup Funds

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with information on other states' cleanup funds. The other states examined included: Alaska, California, Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

Historical Budget of the Regulated Substance Response Fund

Brian Walsh, Hydrology Specialist with the DENR, presented the task force with a table detailing the historical budget of South Dakota's Regulated Substance Response Fund.

Review of Pipeline Accident Costs

Brain Walsh, Hydrology Specialist with the DENR, provided information to the task force on the cost of pipeline incidents in South Dakota, surrounding states and the United States as a whole. The source of the data is the Pipeline Hazardous Material Safety Administration's significant incident database.

Availability and Cost of Liability Insurance for Public and Private Entities

Gary Joyce, Account Executive with Howalt-McDowell Insurance, Inc., provided the task force with an overview of the availability of pollution liability insurance and explained why most business in South Dakota did not have coverage. In addition, he informed the task force that most general liability policies exclude pollution coverage.

DENR Spill Response procedures

Kim McIntosh, Environmental Senior Scientist with the DENR, presented information to the task force on the DENR's typical spill response procedures.

What Happens When Private Property is Contaminated?

Brian Walsh, Hydrology Specialist with the DENR, discussed the options an impacted private property owner would have in the event of damages to him or his property due to a pipeline release. He explained to the task force South Dakota's Regulated Substance Response Fund can only pay for cleanup costs. In some instances, the federal Oil Spill Liability Trust Fund may reimburse for downstream damages from an oil release. However, in many cases, the impacted individual's only recourse to recover damages may be to sue the responsible party.

Oil Spill Liability Trust Fund-Eligible Areas in South Dakota

Brain Walsh, Hydrology Specialist with the DENR, presented a map to the task force showing the national hydrography dataset for South Dakota. The U.S. Coast Guard uses this data set to help determine if an oil spill is eligible for reimbursement under the federal Oil Spill Liability Trust Fund. He further indicated there is no single map available showing whether an oil spill is eligible for reimbursement under the federal fund. The U.S. Coast Guard determines eligibility on a case-by-case basis.

Petroleum Impacts on Plastic Waterlines

Dr. Delvin DeBoer, Professor of Civil and Environmental Engineering and the Director of Water and Environmental Engineering Research Center with South Dakota State University, presented the task force with an overview of the affects of petroleum on plastic waterlines and gaskets.

Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities

Joe Nadenicek, Staff Attorney with the DENR, provided the task force with an explanation of the recent Attorney General's Opinion Regarding the Municipal Marking of Underground Utilities in South Dakota.

TASK FORCE DISCUSSION

Possible Recommendations for Further Consideration

The task force did not make any recommendations at this meeting. Instead, they decided to continue their review of the available information and make their final recommendations at the October 23, 2008 task force meeting.

Direction to DENR Staff

The task force directed DENR staff to revise the minutes from the August 14, 2008 meeting and circulate to the task force members for review and approval at the October 23, 2008 meeting.

The task force directed DENR staff to provide additional information on the fines paid into the South Dakota Regulated Substance Response Fund and to explain the \$567,072 transfer to the fund made in FY 2000.

The task force directed DENR staff to provide information on the tax oil producers pay in South Dakota.

The task force directed DENR staff to provide a breakdown of pipeline incident costs in South Dakota and Minnesota by material released.

The task force directed DENR staff to provide information on the number of petroleum releases in South Dakota by source. Specifically, pipeline releases vs. transportation releases.

The task force directed DENR staff to schedule two additional task force meetings for October 23, 2008 at 9:00 AM and November 13, 2008 at 9:00 AM.

MEETING ADJOURNED – 12:30 P.M.

Sign-in Sheet

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